

**Town of Milford
Zoning Board of Adjustment Minutes
November 7, 2013
St. Joseph's Hospital of Nashua
Case #2013-20
Variance**

Present: Fletcher Seagroves-Chair
L. Horning – Vice Chair
Zach Tripp
Michael Thornton
Joan Dargie
Katherine Bauer – Board of Selectmen's representative

Absent: Paul Butler
Bob Pichette

Secretary: Peg Ouellette

The applicants, St. Joseph's Hospital of Nashua NH, owner of Map 31, Lot 32-1, along with the Town of Milford, owner of Map 31, Lot 32, having lots located on Nashua St, in the Residence "A" district, are requesting a Variance from Article II, Section 2.03 and Article V, Section 5.02.1 to permit the expansion, alteration and/or relocation of an existing, non-conforming use by razing an existing structure and establishing a new medical center structure with related site improvements.

Minutes approved & signed January 16, 2014

F. Seagroves called the meeting to order and read the notice of hearing into the record. The list of abutters was read. Present at the meeting were: Charles & Bonnie Vanetti; J. Michael & Betsy Deasy; Robert & Janet Porter; Melissa Sears and Robert Demers of St. Joseph Hospital of Nashua NH, Kyle Bouchard of Meridian Land Services, Inc. Attorney J. Bradford Westgate of Winer & Bennett represented the applicants.

B. Westgate explained that they are applying to demolish the existing structure and construct a new medical center in its place. They were before ZBA due to Bill Parker's administrative decision and advice from Town Counsel that a variance was needed. He then described the properties and history of the site. The new building will be placed behind the existing medical facility. There will be parking in front where the old building is currently and a new access drive from the Adams property to both the new building and existing rear medical offices building. There will be a pad for an MRI trailer and the parking on the west side will remain but will be reconfigured. The hospital has been before the Planning Board several times and discussions are ongoing. The hospital also met with neighbors on four to five occasions with different neighbors attended different meetings and most comments were from the residents of Linden St. The new building would house similar operations as present; an urgent care facility and laboratory as well as an area for a permanent or mobile MRI diagnostic imaging unit. The offices will be on the second floor and it is not anticipated that there will be any new practitioners. He outlined the setbacks, parking, and the new driveway and stated that the entrance concepts and final details may be different, based on Planning Board approval. He also described the potential land exchange that would need to be approved by the Selectmen and requested that if the variance is granted by the ZBA, it would apply whether the land exchange proceeds or not. This is subject to approval of Selectmen and we feel it makes most sense because then the hospital property would be contiguous rather than on two separate parcels. He referred to the zoning map and said this case is dependent and derived from the nature of the area which is mixed use and residential. This was discussed in 1990 when the center expansion was approved and in 2004 when back office was approved. The Zoning ordinance reflects the nature of the area and with mixed zones, questions arise about uses permitted in the surrounding area. There are many uses including variety store, multi-family, a cemetery, the Adams house, Kaley Park, the medical center, residential homes and the ball field. The mixed use and mixed zoning goes to the criteria regarding granting a variance. Bill Parker determined in his administrative decision that they are not there because of the nature of the use being changed but because they are going to undertake that use in a new building. Because the way the ordinance reads they don't fall within special exception because a new building is needed.

Z. Tripp referred to Sec. 2.03.1 and asked why not maintain the current building and alter or expand it in conformance.

B. Westgate responded that 2.03.C.1 allows the expansion or change of nonconforming uses by special exception, but Mr. Parker, based on Mr. Dresher's advice, felt that the applicants didn't fall within that category since they are removing the old building and replacing it. The current building is not adequate for what is now needed. It is outdated, being 23 years old.

M. Sears said they considered ways to improve services at the Medical Center and the renovation of the structure but because of the age of the building and the fact that one part has been uninhabited and unoccupied for almost a decade, it is not possible or feasible to renovate those and bring them up to code for a health care and medical use building.

Z. Tripp asked if the entrance on Linden St was still needed. Could they end the parking lot within the setback and add trees? His concern was the impact on the residential area and inquired if they could keep the two exits on Nashua St.

K. Bouchard said that is being contemplated for future physician parking. It will be better for both entrances. Demand will be less. The focus will be toward the new entrance. Overall use of the facility will be the same so the amount of travel will be same but relocated between entrances. It is desirable to keep both entrances on Nashua and Linden for that parking if possible, but not essential.

Z. Tripp asked about the black line in the northwest corner.

K. Bouchard said due to new building's elevation meeting the second floor of the rear building and grades on the site, a retaining wall is necessary.

B. Westgate said that is a bit of a change from the original application and explained the details.

Z. Tripp asked about current and proposed use of ambulances.

B. Westgate said there will be no proposed ambulance use because it won't be an ER.

M. Sears said when the structure is turned over to urgent care, before the new building is in operation, the only ambulances that will come will be to transport out during hours of operation. It will not be in operation 16 hours a day. It will be open until 9PM at the latest as an urgent care facility.

L. Horning asked if all emergency care would be directed to Nashua.

M. Sears said there is not a lot of emergency care currently; most is urgent care that is not life and death. People are choosing to go to the hospital if they feel their life is at risk.

F. Seagroves said because of the training of EMTs now, most of the time paramedics can stabilize the patient.

M. Sears said usually in a critical situation they stabilize the patient and then ship them on and the ER was open 7AM to 11PM. A time study showed very few patients after 9 pm, not even one a night and if a freestanding ER was started today, 24 hour operation would be required.

F. Seagroves opened the meeting to public comment. Noting the late time, he requested that remarks be kept to ten minutes as they wouldn't want to postpone this meeting.

Jeff Sennett, son of Janet Porter 11 Linden St appeared on his mother's behalf. He said with the current layout of the map there is a berm and trees along the side of the property where the parking lot ends. It helps block the view, the noise and lights. His mother's home has a deck they use in summer. Regarding the MRI trailer, is it on the side of the residences? What is the noise level? What is timeframe for the operation of the MRI trailer?

There was discussion of location of the MRI and deadening walls.

F. Seagroves said they will only be open until 9 pm and this should go to the Planning Board for discussion. They have had more control over that and could tell them to leave the trees.

J. Sennett raised a concern about water issues that were there last time they built the new building. He has had basement flooding. How will the new building and parking lot impact his water issue?

F. Seagroves suggested sending these questions to the Planning Board. This Board is here to look at the variance, but he was glad this was brought up.

K. Bauer said it was mentioned in the packet and by the applicant there would be changes made to the plan for the 11/19/13 Planning Board meeting. If the changes are major, they will have to come back to the ZBA, so she would like some reassurance they will be minor.

B. Wingate said a lot of engineering and architectural work has been done. The detailed stormwater management has to be processed and they don't want to move the building, entrance or parking, but for example, the parking space sizes might be different.

F. Seagroves reiterated if there major changes, it would come back to ZBA.

B. Wingate said yes, and they don't want that. They have spoken with the neighbors and are aware of the issue with the berm and trees. The building has been shrunk since the first plan that was submitted and it is now 20 ft further east and pulled back from the Porter property, but there is room for trees; whether it is fencing or new vegetation with old, they are mindful of the concerns. It is a Planning Board design-level analysis issue. The noise from the MRI truck would come from the fan and air conditioning unit as opposed to the machinery itself, as he understands. By moving the building, they moved the MRI. It will be about 150 ft from the Sennett house and about 150 ft to the Porter's house. The MRI will be right against the building. Stormwater management is a big issue at Planning Board level.

L. Horning asked if they are changing the shape of the building, not the footprint.

B. Wingate said both.

L. Horning how the flat roof will be developed with the Planning Board.

K. Bouchard said they will be going before Planning Board to discuss their outstanding questions about the berm. There is a landscape plan detailing what the wall will look like and this is the layout they are moving forward with, with minor changes.

L. Horning stated she had concern with additional impervious surface which could contribute to the runoff.

K. Bouchard said there will be several disconnected storm water management measures, managed in small pieces. A couple of facilities on site so, in accordance with town and State requirements, there will not be increase in the volume or peak discharge. They are not be seeking any waivers from any of those requirements. It is part of the stormwater design that will be submitted to the State and Town.

Z. Tripp asked, if there is a current water issue, are they able to locate the cause, correct it and not make it worse.

K. Bouchard said there are a lot of variables and things that have occurred over time that they don't know about. They can meet today's requirements, as they are. The timeline is uncertain about events that have occurred which may have contributed to a change. It is beyond their ability to investigate.

L. Horning asked about a way to measure the amount of impervious surface that will be added to the lot in reference to a roof, or roof pitches and hard surfaces, and to compensate for that.

K. Bouchard said they are implementing measures to compensate for that increased impervious area.

S. Fournier of 9 Woodward Dr gave a copy of her presentation to the Board and said she provided one to the Planning Board. She has been involved with this since summer and testified before the Planning Board on 8/20/13. She said she uses the park to get to the river. Kaley Park shouldn't blur the real issue of what she called an unsuitable lot for a new hospital in Milford. She'd like to see a hospital, with an emergency room, in Milford but not at this location which was never intended to be one. She suggested the vacant Stop & Shop lot. She also said the Town's zoning map puts the property inside the Residence "A" District. She quoted from the ZBA Handbook which states that the ZBA must act within the limit set and cannot disregard these limits. She quoted from 5.03.03 of the Zoning Ordinance that any uses of land and/or structures not included in the Residence A district shall be considered as not permitted. The Handbook says if the ordinance prohibits putting a commercial use in a residential district then granting a variance is rezoning, which the ZBA does not have the power to do. She said the applicants are asking for more than relaxing the rules a bit, but asking the Town to set aside the Ordinance. She believed the ZBA in the past overstepped its powers by rezoning. Will the ZBA attempt to rezone by permitting a third medical building? There will be three buildings there for some time; the medical center staff cannot say for how long. What is the impact on wetlands? Will they come before the ZBA for wetlands?

B. Wingate said they didn't need wetlands permitting for the new building and site improvements.

L. Horning asked why the applicant hadn't considered another location.

M. Sears responded that when they came to Milford in the 1970's that is where it was recommended at the time. They own that land and don't have the resources to buy new property; and it is unlikely that selling the current property would yield enough capital for them to buy a new property and build. Tax-exempt financing requires that it must be expended and the project be fully operational within three years of issuance of the bonds, no later than June 2015.

J. Dargie asked how long three buildings will be there.

M. Sears said current plan is to demolish unoccupied portions immediately. They don't want to shut down services during construction. They will build the new building and once it is operational, will raze the old building. That has been discussed with the Planning Board at length.

B. Wingate said as he understood it, the barn and the house portion would come down first. The 1990 building would stay while the new building is built. Once the new building is functional the final section of the old building would come down.

M. Sears said that is part of the funding requirement so it all has to be completed by June, 2015.

S. Fournier requested they deny the variance because it is prohibited by the Ordinance in a residential location. The spirit of the ordinance was voted in by the people and the wishes of the people should be respected. The property should remain as much in conformity with current regulations as possible.

K. Bauer read the explanation of a variance. The ZBA is here to legally grant special exceptions or variances if the applicant meets the conditions. Variances are included in the Ordinance to prevent the ordinance from becoming unduly confiscatory or oppressive as applied to individual properties that are uniquely situated.

F. Seagroves said in no way are they changing the zoning.

L. Horning said every property is unique.

F. Seagroves said to grant a variance an applicant must meet the five criteria.

F. Seagroves closed the public portion of the meeting.

B. Westgate paraphrased their responses to the five criteria on the application and also referred to a letter from Randy Turmel, real estate broker and partner of Keller Williams in Nashua, dated 10/16/13, which was included in the information provided to the Board. He pointed out that if this facility were on the opposite side of the street, it would be permitted.

- F. Seagroves asked for questions from the Board.
J. Dargie asked if the height of the building will stay the same.
B. Westgate said it will be roughly as high as the barn peak.
K. Bouchard said yes, but will be further back from the road. There are many adjusted roof lines.
Z. Tripp asked if it is still within 35 ft.
K. Bouchard said it was.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp said the nonconforming use will not be contrary to the public interest. The intent of Section 2.03.1 is to allow alteration and expansion which will not change nature of use or unduly impact the character of the neighborhood. He felt it met both. It will do no harm that isn't present today. He hopes the latest plans will improve on any less-than-ideal situations impacting the residential area.

L. Horning agreed it would not be contrary to public interest. It will be in the public interest to have an up-to-date building on that lot.

M. Thornton agreed with Laura.

J. Dargie felt that not granting the variance would be contrary to the public interest.

F. Seagroves agreed. The Handbook asks what would be the public benefit by denying a variance. He felt the public would not benefit by denying, but public would gain by granting.

2. Could the variance be granted without violating the spirit of the ordinance?

L. Horning said it could be granted without violating the spirit of the Ordinance in keeping with the general health, safety and welfare of the public. The building has consistently been a medical center and the town has accepted it as such, regardless of the location. It would not violate the spirit to leave it where it is.

Z. Tripp said it would not threaten the health, safety and welfare more than is currently in use on the property. It abuts Nashua St and the Residence A district. It is not a full-fledged hospital. With the conversion from an ER to urgent care, the use is not out of line with typical uses allowed in Residence R by special exception. The spirit of Section 2.03.0 is to allow a certain level of expansion, alteration, or change that does not change the nature. The use is unchanged and they are just replacing an old building with the new and will not unduly impact the neighborhood. The technological advances in building materials and designs will improve the overall layout design and he felt this was a continuous improvement in structure. This is a natural expansion and alteration, given advances in medical technology that will not make the lot more non-conforming or have a substantially different impact on the neighborhood. It is not a different use in character, nature or kind from the existing non-conforming use.

M. Thornton said it is a better use of the same nature.

J. Dargie said it can be done without violating the spirit.

F. Seagroves agreed. The handbook mentions the health, safety and general welfare and by upgrading the medical facility they are helping health, safety and general welfare.

3. Would granting the variance do substantial justice?

L. Horning said yes. It is already a medical center and forcing the applicant to go elsewhere and purchase a property would not do justice. The applicants have testified they don't have the ability to do that, so there would be no gain to the public in that respect.

Z. Tripp said any loss to the applicant is not outweighed by gain to the public. Loss to applicant would be great in not allowing improvement; the neighborhood would have little or no gain. It would be a status quo. He didn't see how the public could gain by denying the variance.

M. Thornton said it would be substantial justice to the people, who wish it to remain.

J. Dargie said there is no appreciable gain by not allowing it.

F. Seagroves referred to the handbook and said the public will not gain by denying.

4. Could the variance be granted without diminishing the value of abutting property?

Z. Tripp said yes. The facility has been there since 2004 and has been a medical center in some form since the 1990's. Putting in a new state-of-the-art building with the same use would not alter property values. That is supported by the letter from the realtor.

L. Horning said the variance could be granted with no significant diminution of values. The applicants addressed the runoff and are fine tuning the Town's expectation of the new building.

J. Dargie believed it could be granted without diminishing value of abutters' property as well. The issues brought up by the abutters, as well as the lighting will be addressed by the Planning Board. The roof line will be less of an issued if the building will be closing at 9 PM.

M. Thornton said yes. There will be no change in nature of the land and use of the buildings and there is no better nor specifically useful and appropriate use of the land. The variance can be granted without diminishing value of surrounding property because abutting property has nothing to gain by having it anything other than a medical center, other than a cemetery which is already adjacent to that. The noise issue seemed to be substantially addressed.

F. Seagroves said it will not affect the value, going back to Zach's comments, and with information from the realtor.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z. Tripp said what makes this unique is that it already has a building on it. It has been a medical facility for approximately 23 years. It should be treated as medical center lot, making it unique from the lots in the Residence A district. It is staying a medical building. There will be no diminution of property value. The full application of the Ordinance would be to convert it to residential, but it is already a medical building and they took good care with the new design and layout.

L. Horning agreed with what Zach read into the record. The proposed use is a reasonable one. There is no fair and substantial relationship between the ordinance and this proposal. It is a medical center and the hardship is that it has been a medical center and already is a non-conforming use with special conditions attached. That already put it into hardship. The Board cannot be in strict conformance with the Ordinance because it is no longer a home or fit to be used in its current condition, even if abandoned by the hospital; it is obsolete and denial would result in hardship.

M. Thornton said denial would result in unnecessary hardship. It has been pointed out that if not this site, within the framework of money available, it is not feasible.

J. Dargie said taking .i and .ii into consideration, denial will result in unnecessary hardship.

F. Seagroves agreed with Zach. It was mentioned that this was an ideal case for Simplex. It is a good argument that you could put commercial across the street. Hardship because St Joe's owns the property and for them to sell and build on another property is not financially feasible. They already own the property so it is hardship to deny.

1. Would granting the variance not be contrary to the public interest?

L. Horning –yes; Z. Tripp – yes; J. Dargie – yes; M. Thornton – yes; F. Seagrove -yes

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes; J. Dargie – yes; Z. Tripp – yes; L. Horning – yes; F. Seagroves - yes

3. Would granting the variance do substantial justice?

J. Dargie – yes; M. Thornton – yes; Z. Tripp – yes; L. Horning – yes; F. Seagroves - yes

4. Could the variance be granted without diminishing the value of abutting property?

M. Thornton – yes; J. Dargie – yes; Z. Tripp –yes; L. Horning –yes; F. Seagroves - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that

distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

M. Thornton – yes; J. Dargie – yes; Z. Tripp – yes; L. Horning – yes; F. Seagroves – yes

L. Horning made a motion to approve Case #2013-20

Z. Tripp seconded.

Final vote:

L. Horning – yes; Z. Tripp –yes; J. Dargie – yes; M. Thornton – yes; F. Seagroves –yes.

F. Seagroves informed the applicants they had been approved and there was a thirty day appeal period.